

Public Utility District No. 1) **Project No. 2145-000**
of Chelan County, Washington) **Docket No. E-9569-000**

(Issued October 21, 1993)

The proffered third revised interim stipulation is signed by Chelan, National Marine Fisheries Service, Washington Department of Fisheries, Washington Department of Wildlife, Oregon Department of Fish and Wildlife, the Confederated Tribes and Bands of the Yakima Indian Nation, the Confederated Tribes of the Colville Reservation, and the Confederated Tribes of the Umatilla Indian Reservation. In its response filed October 15, 1993, Commission Staff Counsel supports acceptance of the stipulation.

Good cause has been shown for acceptance of the third revised interim stipulation. It is accepted as providing adequate conservation and protection with respect to juvenile anadromous fish at the Rocky Reach Project for the term of the stipulation. This action supersedes the provisions of the second revised interim stipulation accepted by my order of March 1, 1991.

Stephen L. Grossman
Stephen L. Grossman
Presiding Administrative Law Judge

DUPLICATE ORIGINAL

NEWMAN & HOLTZINGER, P.C.

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JAMES B. VASILE
(202) 955-6654

October 5, 1993

RECEIVED
OCT - 8 1993

OFFICE OF ATTORNEY GENERAL
FISH & WILDLIFE DIV - OLYMPIA

Honorable Lois D. Cashell
Secretary
Federal Energy Regulatory Commission
825 N. Capitol Street, N.E.
Washington, D.C. 20426

RECEIVED

OCT 12 1993

HABITAT MGMT.

Re: Rocky Reach Project No. 2145
Docket No. E-9569

Dear Ms. Cashell:

Enclosed for filing are the original and 14 copies of the Motion of Chelan County PUD for Approval of Third Revised Interim Stipulation in the referenced proceeding. Please refer this matter to Presiding Judge Stephen L. Grossman.

Very truly yours,

James B. Vasile

James B. Vasile

Attorney for Public Utility
District No. 1 of
Chelan County, Washington

Encl.

cc: Certificate of Service
Honorable Stephen L. Grossman
Linda Lee, Esq.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Public Utility District No. 1) Project No. 2145
of Chelan County, Washington) Docket Nos. E-9569 et al.

MOTION OF CHELAN COUNTY PUD
FOR APPROVAL OF
THIRD REVISED INTERIM STIPULATION

To the Presiding Judge:

Public Utility District No. 1 of Chelan County, Washington ("Chelan") hereby moves the Presiding Judge in the Mid-Columbia Proceeding to issue an order approving the attached revised interim stipulation with respect to juvenile anadromous fish measures at the Rocky Reach Project for the period September 1, 1993 through August 31, 1995. In support of this motion Chelan states as follows.

1. By order dated November 20, 1987, the Presiding Judge approved an interim stipulation with respect to juvenile anadromous fish measures at the Rocky Reach Project for the period July 1, 1987 through August 31, 1988.

2. Pursuant to paragraph 5 of the interim stipulation, the term thereof was extended to August 31, 1989 by the filing of a notice with the Presiding Judge on September 30, 1988.

3. By order dated November 1, 1989, the Presiding Judge accepted a revised stipulation with respect to such measures for the period September 1, 1989 through August 31, 1990.

4. By order dated March 1, 1991, the Presiding Judge accepted a second revised stipulation with respect to such measures for the period January 1, 1991 through August 31, 1993.

5. On June 3, 1993, Chelan filed with the Presiding Judge a motion for acceptance of its interim mitigation plan for the period September 1, 1993 through August 31, 1995. On June 18, 1993, the FERC Staff filed an answer in support of Chelan's motion. On the same date the Joint Fishery Parties filed an answer opposing Chelan's motion and a petition for acceptance of their own interim protection program.

6. By order issued June 23, 1993 the Presiding Judge scheduled a prehearing conference for July 20, 1993. However, by letter dated July 15, 1993, Chelan advised the Presiding Judge that Chelan and the Joint Fishery Parties had reached a settlement in principle and intended to execute and file a revised interim stipulation as soon as practicable. Accordingly, the prehearing conference was cancelled by order issued July 16, 1993.

7. The Third Revised Interim Stipulation which is enclosed herewith reflects the agreement of Chelan and the Joint Fishery Parties with respect to juvenile fish mechanical bypass studies, interim protection through the use of spill, interim hatchery compensation and the conduct of other studies related to anadromous fish protection. In addition, the stipulation incorporates several terms and conditions which have been included in the previous interim stipulations.

8. The stipulation has been signed by Chelan, Washington Department of Fisheries, Washington Department of Wildlife, National Marine Fisheries Service, Oregon Department of Fish and

Wildlife, the Yakima Indian Nation and the Confederated Tribes of the Colville and Umatilla Indian Reservations. Representatives of the power purchasers of the Rocky Reach Project have received notice of the stipulation.

9. Chelan respectfully requests the Presiding Judge to approve the stipulation expeditiously because Chelan is incurring significant costs in connection with the mechanical bypass studies. Chelan has begun work on the turbine roof intake seals in order to meet the agreed upon testing schedule.

WHEREFORE, Chelan requests the Presiding Judge to issue an order approving the third revised interim stipulation.

Respectfully submitted,



James B. Vasile
Attorney for Public Utility
District No. 1 of Chelan
County, Washington

Attachment

cc: Mid-Columbia Service List

Public Utility District No. 1) Project No. 2145
of Chelan County, Washington) Docket Nos. E-9569 et al.

ROCKY REACH PROJECT
THIRD REVISED INTERIM STIPULATION

Public Utility District No. 1 of Chelan County, Washington ("Chelan") and the National Marine Fisheries Service, Washington Departments of Fisheries and Wildlife, Oregon Department of Fish and Wildlife, Confederated Tribes and Bands of the Yakima Indian Nation, Confederated Tribes of the Colville Reservation, and the Confederated Tribes of the Umatilla Indian Reservation (hereafter collectively referred to as "Fishery Agencies and Tribes") hereby enter into this interim Stipulation in the Mid-Columbia proceeding with respect to juvenile anadromous fish measures at the Rocky Reach Project.

1. Chelan will fund and conduct juvenile fish mechanical bypass studies in accordance with the following schedule:
 - A. 1993-1994 - Chelan will model at WSU, design, construct, and install the following prototype guidance system in Bays A, B, and C of turbine unit 1: The trashracks in Bays B and C will be relocated to positions adjacent to the existing, relocated trashrack in Bay A and bolted to the upstream face of the pier noses. Turbine intake roof seals extending from the intake beam upstream to the relocated trashracks will be installed in Bays A, B, and C. New 23 foot bar

screen deflectors will be installed in all three bays and will be constructed out of material to be determined as a result of modeling. A new vertical barrier screen with a balanced flow design will be installed in each gatewell.

- B. 1994 - Chelan will field test the prototype guidance system in turbine unit 1 during spring and summer migrations. When one bay is being tested with a fyke net, devices will be installed in the other two bays to prevent flow shift.
- C. 1995 - Chelan will refine the prototype guidance system as necessary based on the results of the 1994 tests. The prototype guidance system will be retested in 1995, if determined to be appropriate by the Mid-Columbia Coordinating Committee ("Committee") in accordance with Section 1(E), below.
- D. 1994 and 1995 - From April 15 - August 15 Chelan will operate the prototype guidance systems installed in Bays A, B, and C of turbine unit 1, remove all fish from the gatewells of turbine unit 1 and, based on criteria to be developed by the Designated Representatives of the Fishery Agencies, Tribes, and Chelan, as set forth in Section II of the Stipulation filed with the Presiding Judge by letter dated March 28, 1985 ("Designated Representatives"), transport and release the fish below Rocky Reach dam. The Designated Repre-

sentatives will determine the schedule for collection, and methods for transport and release of fish from the gatewells of turbine unit 1, with a protocol for adjustment to the schedule and methods as needed during seasonal changes in fish numbers and ambient environmental conditions.

E. 1994-1995 - If the fish guidance efficiency from the spring and summer 1994 prototype testing is high enough to warrant further testing, as determined by the Committee, Chelan will perform the following:

a. In consultation with the Committee, Chelan will finalize the design of a conduit system to remove fish from the gatewells and transport them to the tailrace.

b. Chelan will begin design of outfall facilities using criteria developed by the Committee as well as tailrace hydraulic conditions and logistical constraints associated with the site.

2. To insure there is no delay in the implementation of a long term bypass solution at Rocky Reach, Chelan will have a second model constructed at a separate laboratory and will conduct parallel investigations of other bypass alternatives including a skim spill/sluciceway concept to bypass fish around Rocky Reach. Development will occur in accordance with the following schedule:

- A. 1993-1994 - Chelan will investigate different bypass alternatives and develop the criteria necessary so that Chelan's consulting engineers can develop structural criteria to incorporate into a design. The most promising alternatives will be modeled and refined.
 - B. 1995 - If the fish guidance efficiency from the spring and summer 1994 prototype testing is not high enough to warrant further testing, as determined by the Committee, Chelan will proceed to design and construct the most promising alternative modeled in 2A for future testing and evaluation.
3. During the term of this Stipulation, Chelan shall provide interim protection of juvenile migrants through the use of spill. The Designated Representatives will attempt to maximize spill efficiency for passing juvenile migrants through the project according to the schedules and specifications set out below:
- A. 1994 and 1995 - Chelan shall provide spill at a level of 15% of the daily average flow for a 30 day period during the spring juvenile migration. The beginning date of the 30 day spill period shall be determined by the Designated Representatives. In addition, Chelan will provide up to 6 extra days of spring spill at the 15% daily average flow level if necessary to encompass 90% of the run of Okanogan River sockeye, as determined by the Designated Representatives in accordance with

criteria agreed to in advance by the Designated Representatives.

- B. 1994 and 1995 - Chelan shall provide spill at a level of 10% of daily average flow for a total of 34 days between June 15 and August 15. The spill will normally occur four nights per week (Tuesday through Friday). However, the Designated Representatives shall have the authority to arrange the days of spill differently if desirable in order to encompass periods when large numbers of migrants are present.
4. In consultation with the Committee, Chelan will develop a predator control program which will be implemented in the summers of 1994 and 1995 and consist of a concentrated angling effort aimed at squawfish located in the tailrace area of Rocky Reach dam.
5. During the term of this Stipulation, Chelan shall provide funding and hatchery capacity at the Rocky Reach, Turtle Rock and Chelan Falls facilities adequate to rear up to 54,400 pounds of upriver bright fall chinook and 30,000 pounds of steelhead annually. Fall chinook production will be split between sub-yearling releases at 50 fish per pound (29,400 pounds) and yearling releases at 10 fish per pound (25,000 pounds). All steelhead will be released as yearlings at 6-8 fish per pound. Primary source of broodstock for fall chinook is from collection at the Wells Hatchery channel and for steelhead from the west fishway at Wells

Dam. The secondary source of fall chinook broodstock, in case of insufficient eggs collected at Wells, is Priest Rapids Hatchery. The Committee will identify long-term compensation options. These options may include additional hatchery production or ways to augment natural production of the stocks above Rocky Reach dam. All specific compensation options that are identified will have a schedule for implementation attached to them. Chelan will provide funding for the evaluation of such options during the term of this Stipulation.

6. In addition to the studies described in connection with evaluation of smolt collection and bypass facilities, Chelan will participate in the following studies:
 - A. Chelan will continue to participate in and fund its share of the study of predation on juvenile salmon and steelhead at the Mid-Columbia Hydroelectric Projects as outlined in the September 30, 1992 proposal from WDW.
 - B. Chelan may fund and conduct additional juvenile mortality studies to identify more precisely where mortality is occurring in the project areas.
 - C. Chelan will continue to participate in and fund its share of the study of adult salmonid passage at Mid-Columbia Hydroelectric Projects as outlined in the April 30, 1992 Request for Proposals. Chelan notes that adult passage is not within the jurisdiction of the Mid-Columbia proceeding.

7. The Fishery Agencies and Tribes shall cooperate with Chelan in the conduct of the above studies and shall provide assistance in obtaining any approvals or permits which may be required in connection herewith. All investigation and study decisions shall be made by the Committee pursuant to Section VI of the Stipulation filed with the Presiding Judge by letter dated March 28, 1985. Section VI of the foregoing Stipulation shall continue in effect until the term of this Stipulation expires.
8. Section J.6, entitled "Force Majeure," of the Rock Island Settlement Agreement dated April 24, 1987, is hereby incorporated by reference into this Stipulation.
9. The term of this Stipulation shall be September 1, 1993 through August 31, 1995, provided that in the event Chelan and the Fishery Agencies and Tribes agree that further modifications and testing of the prototype guidance system and conduit facilities are warranted during subsequent fish migration seasons, the term of this Stipulation may be extended upon the filing of an annual notice by all Parties with the Presiding Judge. Such notice shall be filed on or before August 31 of each calendar year.
10. Each party acknowledges that as of the date it signs this Stipulation, the measures specified by this Stipulation provide adequate conservation and protection with respect to juvenile anadromous fish at the Rocky Reach Project for the term of the Stipulation. The Fisheries Agencies and Tribes

shall refrain from contending on their own behalf or supporting any contention by other persons in any proceeding or forum that any juvenile anadromous fish measures or changes in project structures or operations pertaining to such fishery issues in addition to those specified by this Stipulation should be imposed at the Rocky Reach Project during the term of this Stipulation. Provided however, nothing in this Stipulation shall limit the ability of a party to implement the provisions of the Endangered Species Act, 16 U.S.C. § 1531 et seq.

11. Following execution of this Stipulation by all Parties hereto, Chelan shall file it with the Presiding Judge in the Mid-Columbia proceeding for approval. Performance of all Parties' obligations hereunder is expressly made contingent upon obtaining the approval of the Presiding Judge and all applicable permits.
12. The Rocky Reach Second Revised Interim Stipulation accepted by order of the Presiding Judge issued March 1, 1991, is hereby superseded.
13. Neither FERC approval nor any Party's execution of this Stipulation shall constitute approval of admission of, or precedent regarding, any principle, fact or issues in any proceeding.
14. This Stipulation may be executed in counterparts. A copy with all original executed signature pages affixed shall constitute the original Stipulation.

IN WITNESS WHEREOF, the Parties have executed this
Stipulation.

Dated July 26, 1993.

Signature page for Rocky Reach Project
Third Revised Interim Stipulation dated July 26, 1993

PUBLIC UTILITY DISTRICT NO. 1
OF CHELAN COUNTY

By *Sonny D. Smart*
Sonny D. Smart
General Manager and
Chief Executive Officer

Date: _____

Signature page for Rocky Reach Project
Third Revised Interim Stipulation dated July 26, 1993

NATIONAL MARINE FISHERIES SERVICE

By

Ronald F. Smith

Date:

8/15/93

Signature page for Rocky Reach Project
Third Revised Interim Stipulation dated July 26, 1993

WASHINGTON DEPARTMENT OF FISHERIES

By:

Robert L. Turner

DATE:

Aug 23, 1993

Signature page for Rocky Reach Project
Third Revised Interim Stipulation dated July 26, 1993

WASHINGTON DEPARTMENT OF WILDLIFE

By: Curt Smith

DATE: 8/23/93

Signature page for Rocky Reach Project
Third Revised Interim Stipulation dated July 26, 1993

OREGON DEPARTMENT OF
FISH AND WILDLIFE

By Douglas A. DeHart

Date: September 28, 1993

Signature page for Rocky Reach Project
Third Revised Interim Stipulation dated July 26, 1993

CONFEDERATED TRIBES AND BANDS
OF THE YAKIMA INDIAN NATION

By Harry Smith

Date: 8.10.93

Signature page for Rocky Reach Project
Third Revised Interim Stipulation dated July 26, 1993 >

CONFEDERATED TRIBES OF THE
COLVILLE RESERVATION

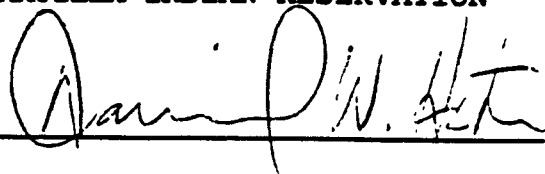
By E. Palmer

Date: _____

Signature page for Rocky Reach Project
Third Revised Interim Stipulation dated July 26, 1993

CONFEDERATED TRIBES OF THE
UMATILLA INDIAN RESERVATION

By



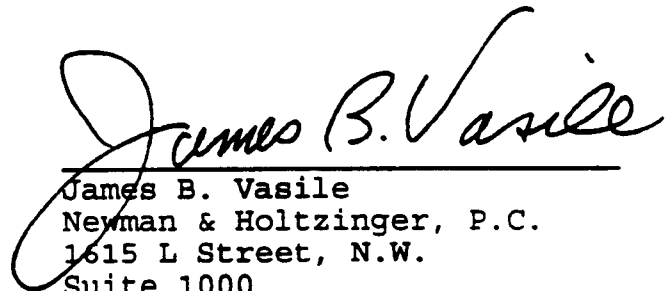
Date:

August 23 1993

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C. this 5th day of October,
1993.



James B. Vasile
Newman & Holtzinger, P.C.
1615 L Street, N.W.
Suite 1000
Washington, D.C. 20036
202/955-6654

A G R E E M E N T

2

THIS AGREEMENT is made and entered into this 2nd
day of JULY, 1963, by and between:

PUBLIC UTILITY DISTRICT NO. 1 of CHELAN COUNTY, WASH-
INGTON, hereinafter referred to as "the District",

and

THE STATE OF WASHINGTON, DEPARTMENT OF GAME, herein-
after referred to as "the Department".

R e c i t a l s:

1. The District is a municipal corporation organized under the laws of the State of Washington, and is authorized under Federal Power Commission License No. 2145 to construct and operate the Rocky Reach Project on the Columbia River;
2. The Department, as an agency of the State of Washington, is charged with the responsibility of preserving the sports fishery and wildlife on the Columbia River within the area affected by the Rocky Reach Project, and with the responsibility of preserving the migration of steelhead in the Columbia River;
3. Federal Power Commission License No. 2145, Article 31, provides as follows:

The Licensee shall construct, operate and maintain or shall arrange for the construction, operation and maintenance of such ladders, traps, hatcheries, dikes, fences, islands and marsh areas or other facilities or protective devices for the purpose of conserving fish and wildlife resources, and comply with such reasonable modifications in project structures and operations in the interest of conserving fish and wildlife resources as may be prescribed hereafter by the Commission upon recommendation of the Secretary of Interior, and the Departments of Fisheries and Game of the State of Washington,

and the Licensee, after notice and opportunity for hearing. In addition, the Commission may, upon recommendation of the aforesaid agencies, require the Licensee after notice and opportunity for hearing to reserve from public access such project waters and adjacent project lands owned by the Licensee and to acquire or arrange for the acquisition and maintenance of such other lands, if any, as may be reasonably necessary for the protection and management of fish and wildlife resources affected by the project.

4. The parties desire to enter into this agreement in order to define the responsibilities and obligations of the District for the period of the License and to provide a means of meeting those responsibilities and obligations under Article 31 of the License set forth above and of preserving and maintaining the stocks of fish and wildlife of the affected portions of the Columbia River at levels which are the general equivalent of those which occurred in the project area at the time the License was issued in the manner, by the methods and pursuant to the limitations defined in this agreement.
5. In the event of any renewal or extension of the License No. 2145, extending the term of, or renewing said License, the District shall have no further obligation during the term of such extensions or renewals for preserving or maintaining fish or wildlife, the responsibilities and obligations herein assumed by the District during Period A and Period B being in full and final discharge of all District obligations in regard to damage or injury to fish or wildlife or replacement thereof.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties agree as follows:

SECTION 1. DEFINITIONS.

- (a) "Steelhead migrants" shall mean steelhead fish between six (6) and eight (8) inches in length.
- (b) "Legal size rainbow trout" shall mean rainbow trout of at least six (6) inches in length.
- (c) "Period A" shall mean a twenty-five (25) year period of time from July 15, 1963, and lasting until July 15, 1988.
- (d) "Period B" shall mean that period of time between July 15, 1988, and the expiration date of Federal Power Commission License No. 2145 on July 1, 2005.
- (e) "Program" shall mean the hatching, raising, planting and releasing of the steelhead migrants and rainbow trout, together with the obtaining of eggs in connection therewith, provided for under the terms of this agreement during Period A.

SECTION 2. FISH HATCHERY.

The District shall construct and maintain a fish hatchery located on lands owned by it in Chelan County, Washington, adjacent to the hatchery presently operated by the Department. Title to hatchery lands and related equipment shall be and remain in the District. The hatchery shall have sufficient capacity and equipment to hatch, raise, plant and release one hundred and ninety-five thousand (195,000) steelhead migrants per year. The hatchery shall also have sufficient capacity and equipment to hatch, raise, plant and release ninety thousand (90,000) legal size rainbow trout each year.

The hatchery will be designed and constructed in accordance with the latest improvements in the science of fish propagation. The District is to proceed with the construction of the hatchery in a diligent manner for the purpose of completing construction of the holding ponds by approximately September 1, 1963; the hatchery building and equipment by approximately January 1, 1964; the feed building and equipment by approximately January 15, 1964; and the rearing raceways by approximately February 15, 1964.

It shall be solely the District's responsibility to continuously supply water to the hatchery of adequate quality and quantity to insure that the hatchery will be able to carry out the Program.

Any authorized agent of the Department shall have the right, at any time during the construction of the hatchery, to inspect the progress of construction and inspect the plans and specifications being used by the construction contractor.

The Department shall be entitled to the possession and use of the hatchery and its related equipment commencing at the time that the construction of each portion of the hatchery is completed, and thereafter for the remainder of Period A for the purpose of carrying out the Program and shall be solely responsible for and have sole control over the operation of the hatchery and the policies and methods of hatchery operations during the full term of Period A, subject to the terms of this Agreement. Any hatchery capacity and related equipment not necessary to be used by the Department in carrying out the Program shall be available for use by the District; provided that such use will not interfere with or hamper the Department in carrying out the Program and shall be subject to the terms and conditions of an agreement to be made between the District and the Department. No parties other than the District and the Department shall use any part of the hatchery or related equipment without the consent of both the District and the Department.

SECTION 3. OPERATION AND MAINTENANCE OF HATCHERY AND REIMBURSEMENT FOR COSTS.

The Department shall hatch, raise, plant and release during Period A 195,000 steelhead migrants annually, provided, however, that such number shall be subject to evaluation and reduction as provided for in Section 6 of this agreement. The Department shall also during Period A hatch, raise, plant and release in streams in Chelan County 90,000 legal size rainbow trout annually and shall consult with the District regarding its release program for said rainbow trout.

The District shall maintain the hatchery and its related equipment in proper operating condition during Period A at its sole cost and expense, or, at its option, may have such necessary maintenance work performed by the Department and reimburse the Department for the cost thereof; provided, that if the District fails to perform necessary maintenance work the Department may, after first giving the District notice and an opportunity to perform such work, do the necessary maintenance work and in such case shall be reimbursed by the District for the reasonable and necessary cost thereof.

The District shall reimburse the Department on a monthly basis, or as the parties may otherwise agree, for the entire reasonable and necessary direct operating costs and the reasonable and necessary direct administrative costs incurred in carrying out the Program; provided, that such administrative costs shall not exceed five percent (5%) of such operating costs. All of such costs shall be itemized and shall include, but not be limited to, the cost of all eggs, feed, labor and other items of the Program.

The Department shall operate said hatchery in an efficient, economical and workmanlike manner and consistent with good business and operating practices.

The Department shall submit to the District, on or before July 15th of each year during Period A, a proposed budget for the operation and maintenance of the hatchery and its related equipment for each succeeding two year period and shall consult with the District with regard to the items contained in the budget.

The District shall have the right at all reasonable times to inspect the hatchery and its related equipment and shall have the right during the regular office hours of the hatchery to inspect the records of the Department relating to its expenditures for the operation of the hatchery and its related equipment and shall be entitled to be furnished such other information as may reasonably be requested from time to time in order for the District to determine the reasonableness and necessity of the costs incurred or to be incurred by the Department.

The Department shall also furnish the District a report in writing, at least annually, covering the Program for the preceding year.

SECTION 4. RESIDENCE FACILITIES.

The District shall construct and maintain during Period A, at the hatchery site, for the use of personnel of the Department engaged

in the operation of the hatchery a suitable three (3) bedroom residence. The design specifications and maintenance of the residence shall be such as is generally provided for by the Department for the normal use of its hatchery personnel. Title to and ownership of such residence shall at all times be and remain in the District.

SECTION 5. FISH AND WILDLIFE PROJECTS.

The District is to make available to the Department the sum of seven hundred thousand dollars (\$700,000.00) for the acquisition and development of public fishing and hunting areas and fishery and hunting improvement projects in Chelan County and in the portion of Douglas County adjacent to the Rocky Reach reservoir, but principally in Chelan County, which areas and improvement projects are to be owned and maintained by the Department. The areas and projects to be so acquired and developed are to be such as are agreed upon by the parties and the acquisition and development program is to extend over a period of approximately five (5) years, or such longer period as may be requested by the Department. Salary and travel costs of acquisition chargeable to the fund created by this section shall not exceed seven thousand dollars (\$7,000.00) unless otherwise agreed to by the parties.

SECTION 6. STEELHEAD EVALUATION PROGRAM

It is agreed that the maximum number of downstream steelhead migrants required at District expense, during Period A will not exceed 195,000 annually. Such determination was made as follows:

A. Total run over Rock Island (July 1961-July 1962)	7,528
B. Total run over Rocky Reach (including time lag)	4,594
C. Tributary spawning above Rocky Reach	750
Entiat -----	100
Methow -----	600
Okanogan ----	50
D. Main stem spawners between Rocky Reach & Chief Joseph (Item B less Item C)	3,844
E. Distribution breakdown of 15% Rocky Reach pool area and 85% above. The number of adults spawning Rocky Reach pool area.	577
F. Number of adults spawning above Rocky Reach, including tributary streams.	4,594
G. Number of migrants required to produce 577 returning adults at .35 of 1% return.	165,000
H. Number of migrants calculated to produce 4017 returning adults at 1% return.	401,700
I. 5-1 $\frac{1}{2}$ % mortality on 165,000 migrants over Rocky Reach	9,075
J. 5-1 $\frac{1}{2}$ % mortality on 401,700 migrants over Rocky Reach	22,093
K. Total hatchery production for restitution on loss of main stem spawning area and mortality loss over dam. (this number has been arbitrarily rounded off to 195,000)	196,168

The parties further agree that the following evaluation formula is to be used to control the steelhead hatchery production program below the maximum requirement.

$$\text{Formula:} \quad X = \frac{577 (174075)}{Y}$$

Where: X = number of migrants required at District expense

577 = number of adults for which the District is responsible. (Subject to the limits of maximum number of migrants)

174075 = number of downstream migrants initially calculated to produce a return of 577 adults and includes anticipated mortality at Rocky Reach.

Y = number of hatchery marked returning adults and is based on the schedule outlined below.

The first evaluation and possible hatchery production reduction would be after July 15, 1973. This evaluation would use the mean number of returning adults for the previous five years, using:

1. July 15, 1968 to July 15, 1969
2. July 15, 1969 to July 15, 1970
3. July 15, 1970 to July 15, 1971
4. July 15, 1971 to July 15, 1972
5. July 15, 1972 to July 15, 1973
6. July 15, 1973 to July 15, 1974

In 1974 there would be another evaluation, dropping off No. 1 above and adding No. 6. Each following year there would be an annual evaluation using this method. Evaluations shall be made between July 15 and 30, immediately following the previous spawning season so that any reduction would be reflected in the number of adults taken for egg production beginning the following Fall.

In the event that the evaluation program, in any year based on the application of the above formula, shows that a lesser number of downstream migrants than 195,000 are necessary, reduction of migrants will be made according to the following schedules:

<u>COLUMN A</u> Calculated number of migrants required	<u>COLUMN B</u> Number of migrants that will be produced
187,500 to 195,000	195,000
172,500 to 187,499	180,000
157,500 to 172,499	165,000
142,500 to 157,499	150,000
127,500 to 142,499	135,000

(The above schedules shall be continued as follows: For each additional bracket decrease of 15,000 calculated migrants, an additional 15,000 shall be subtracted from the number of migrants that will be produced.)

All plants from the hatchery will be made above Rocky Reach Dam. Exceptions shall be by mutual agreement. Each year there will be a hatchery marking program, either marking all of the migrants or a statistically significant number of these migrants. All adult observations will be made at the Rocky Reach counting facility.

SECTION 7. MAINTENANCE OF DEPARTMENT'S PROGRAM.

The Department will continue its usual and normal sport fish and wildlife programs in Chelan County, in accordance with good management and conservation practices, in addition to the Program and will not make any reduction therein by reason of the Program.

SECTION 8.

Performance by the District of the obligations set forth in the preceding Sections of this Agreement shall be deemed to be in full and complete replacement and compensation for all losses of and damage to fish and fishery resources over which the Department has jurisdiction resulting from the construction and operation of the Rocky Reach Project during Period A.

Performance by the District of the obligations set forth in the preceding Sections of this Agreement shall be deemed to be full and complete replacement and compensation for all losses of and damage to game and wildlife resources over which the Department has jurisdiction resulting from the construction and operation of the Rocky Reach Project during Period A and during Period B.

SECTION 9. OBLIGATIONS DURING PERIOD B.

During Period B it is agreed that such responsibility as the District may have under the provisions of Federal Power Commission

License No. 2145 with respect to fishery resources under the jurisdiction of the Department shall be limited to replacement of or compensation for losses of or damage to steelhead and whitefish resulting from the construction and operation of the Rocky Reach Project.

One year prior to the expiration of Period A, the District and the Department shall each assign a qualified person, who may in turn appoint a third person, to conduct a factual study of the sport fishery resource in the Rocky Reach Project reservoir and in the tributary streams of the Columbia River in Chelan County and submit a report thereon to the District and the Department for consideration. In the event information is required for the making of such report which cannot be made available by regularly employed personnel of the Department or the District, the parties shall share the cost of obtaining such information equally.

If there is a continuing loss of steelhead at the end of Period A and the parties hereto are unable to agree upon a continuing program of steelhead propagation for Period B, the dispute shall be resolved by the Federal Power Commission, after notice to the parties and an opportunity to be heard. However, the District's responsibility for the propagation of steelhead shall, in no event, exceed the number of steelhead to be produced annually during Period A in accordance with Section 6 of this Agreement.

The District and the Department on the basis of the factual report to be submitted to them at the end of Period A shall determine whether there is a non-steelhead sport fishery comparable to the whitefish fishery which existed in the Rocky Reach reservoir area, as described in the Progress Report prepared by Jack D. Ayerst, dated March, 1958, as a part of the Rocky Reach pre-flooding studies. If such fishery is determined to be comparable, the District shall have no further responsibility for the propagation of rainbow trout. If such fishery is determined to be not comparable to said whitefish fishery, as described in said Progress Report, and the parties are not able to agree upon a continuing program of replacement, the matter shall be resolved by the Federal Power Commission after notice to the parties and opportunity to be heard. However, the responsibility of the District during Period B for the production of rainbow trout shall, in no event, exceed its responsibility for the production of 90,000 annually.

SECTION 10. ARBITRATION.

In event a factual dispute arises under the provisions of Sections 2, 3 and 4 or in connection with the steelhead marking or adult observation programs under the provisions of Section 6 of this Agreement, the dispute shall be submitted to a board of arbitration for decision, and such decision will be final and binding on the parties. If either party shall elect to submit a matter to arbitration, it shall notify, in writing, the other party of such election and shall

shall state the name of the person selected by it as one of the arbitrators. Within thirty (30) days after receipt of such notice, the other party must provide, in writing, to the party initiating the arbitration, the name of the person selected by it as arbitrator. The two arbitrators so selected shall select a third arbitrator. If the two arbitrators shall not agree as to the third within thirty (30) days after the selection of the second arbitrator, either party may request the Chief Justice of the Supreme Court of Washington to select the third arbitrator, and the arbitrator selected by the Chief Justice shall act as the third arbitrator. The arbitration shall be governed by the laws of the State of Washington, and the cost thereof, including the fees and expenses of the arbitrators, shall be borne as determined by the arbitrators.

PUBLIC UTILITY DISTRICT NO. 1
OF CHELAN COUNTY

BY *Walter Billingsley*
John P. Campbell Pres.

ATTEST:
BY *L. G. Richardson*

STATE OF WASHINGTON,
DEPARTMENT OF GAME

BY *J. A. Buggs*

ATTEST:
BY *Samuel J. Berman*

February 20, 1970

TO: CHAIRMAN AND MEMBERS, GAME COMMISSION

FROM: CARL N. CROUSE
ASSISTANT DIRECTOR-OPERATIONS

Enclosed is a Memorandum of Understanding relating to expenditure of the remaining funds in our Chelan PUD mitigation account. This Memorandum is a result of our meeting on February 18, 1970 with members of the PUD Commission, which was also attended by Mr. Edson Dow. I believe that there will be no problem in reaching agreement on Section A, items 1, 2, and 3, which are the key points relating to our purchase of the Chelan Butte property. Item 4 of Section B is probably the key point as far as the PUD Commission is concerned.

It is necessary that the Game Commission determine if they will approve the purchase of the Chelan Butte property in the very near future so that we can proceed with the acquisition of the property. It is therefore anticipated that a conference call will be made at 11:00 a.m. on February 25, 1970 to discuss the matter.

CNC:pc

enclosures

State of Washington



Game Commission / Claude Bekins, Seattle, Chairman
Edson Dow, Wenatchee
Harold A. Pebbles, Olympia
Arthur S. Coffin, Yakima
James R. Agen, LaConner
Elmer G. Gerken, Quincy
Director / John A. Biggs

DEPARTMENT OF GAME

600 North Capitol Way / Olympia, Washington 98501

February 20, 1970

Howard Elmore, Manager
Chelan County Public Utility District
Post Office Box 1231
Chelan, Washington

Dear Mr. Elmore:

Enclosed is a Memorandum of Understanding relating to the expenditure of the remaining Fish and Wildlife Mitigation Fund resulting from our 1963 agreement on the Rocky Reach Hydroelectric Project.

The Memorandum, I believe, reflects the results of our discussions held on February 18, 1970, among members of the Game Department, Game Commission, and the PUD Commission. If it is felt that a signed document of this Memorandum is necessary, please advise and we will prepare one.

If there are any questions, please call, so that we can resolve any problems as expeditiously as possible.

Very truly yours,

THE DEPARTMENT OF GAME

Carl N. Crouse
Assistant Director

CNC:pc

enclosures

MEMORANDUM OF UNDERSTANDING
RELATIVE TO EXPENDITURE OF FISH AND WILDLIFE MITIGATION FUNDS
ROCKY REACH HYDROELECTRIC PROJECT

The Department of Game and the Chelan County Public Utility District, in order to complete the acquisition and development phase under Section 5, page 5, of our agreement dated July 2, 1963, would propose the following:

- A. The PUD shall transfer all remaining funds referred to in the above agreement into one account, which shall be the Fisheries Management and Wildlife Account, the total being approximately \$253,000. The department will draw money from this account for the following purposes:
 1. Development of the Lake Chelan spawning channel, or channels, for fishery management purposes in the amount of approximately \$100,000, said development to be completed by January 1, 1972.
 2. Purchase of the Chelan Butte property (payments I and II) in accordance with the attached contract, and including necessary costs of title insurance.
 3. Purchase of any in-holdings within the present Entiat and Swakane recreational areas with funds above those necessary for the spawning channel and payments I and II on Chelan Butte property upon approval of Chelan PUD.

MEMORANDUM OF UNDERSTANDING
EXPENDITURE OF FISH AND WILDLIFE MITIGATION FUNDS
ROCKY REACH HYDROELECTRIC PROJECT
Page 2

B. The department and the Chelan PUD further agree to the following:

1. Any funds remaining in the Fisheries Management and Wildlife Account as of 1 January 1972 will be made available for additional payments on the Chelan Butte property.
2. The department will, with department funds, continue the public fishing access program in Chelan County.
3. The department will be responsible for the completion of all payments on Chelan Butte after the expenditure of all existing PUD funds.
4. In recognition of horticulture as one of the important and basic industries of Chelan County, the Department of Game, following the PUD's desire to retain for horticultural use those lands considered suitable for such use, and upon request of any individual and approval of the PUD, will present to the Game Commission for their consideration the sale or exchange of those lands, not to exceed 200 acres, suitable for orchard development, lying within the South half (S $\frac{1}{2}$) of Sections 3 and 4, Township 26 North, Range 22 East W. M., provided that such a request is received by the Game Department prior to January 1, 1976 and provided that the request for purchase or exchange shall include plans for development of the area within two years of the date of

MEMORANDUM OF UNDERSTANDING
EXPENDITURE OF FISH AND WILDLIFE MITIGATION FUNDS
ROCKY REACH HYDROELECTRIC PROJECT
Page 3

B., 4., continued

transfer, and provided further, that any exchange or sale of this land will be in conformity with State laws governing the right of the Game Commission to sell or exchange property. If no request for the sale of this property is received by the Commission prior to the above date, future disposal of this property may be handled by the Commission in accordance with its policies on disposal of land of this type.

5. If the above property is sold by the State Game Commission, the proceeds from this sale will be used by the Game Department in further acquisition or development of properties within Game Region Five.
6. An audit will be made jointly by the PUD and the department to determine funds available at this time and a final audit approximately three months before any final payment on Chelan Butte in which PUD funds will be used.

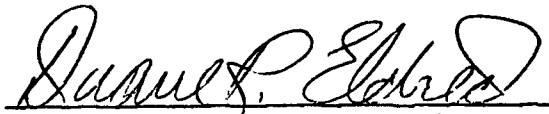
CHELAN HATCHERY STEELHEAD EVALUATION

The Rocky Reach Project fisheries mitigation agreement between the Washington Department of Game and Chelan County Public Utility District, entered into on July 2, 1963, concerning the Chelan Hatchery program, requires annual evaluation of adult steelhead returns produced by the District-funded steelhead trout mitigation program. Evaluation of the program has been completed by representatives of the two agencies in accordance with procedures specified in the agreement. The agreement specifies that the District is obligated to return 577 adult steelhead each steelhead run year (July 16 through July 15 of succeeding year). The maximum number of juvenile steelhead the District shall raise (195,000) will be maintained or adjusted downward in proportion to the actual number of returning marked adults exceeding, equaling or falling short of the required number (577). The agreement specifically states that adult returns will be evaluated as the average of five year intervals. The first period to be evaluated is July 16, 1968 to July 15, 1973. Successively, the second and third five year intervals are July 16, 1969-July 15, 1974 and July 16, 1970-July 15, 1975. The evaluations are as follows:

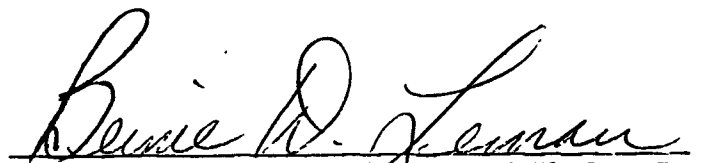
<u>Interval</u>	<u>Adults</u>		<u>Juveniles</u>	
	<u>Required</u>	<u>Returned</u>	<u>Produced</u>	<u>Required</u>
1968-1973	577	646	195,000	177,000
1969-1974	577	641	195,000	179,000
1970-1975	577	629	195,000	182,000

According to the formula the most the rearing program could have been reduced was to 180,000 annually for the last three years. Considering the state of steelhead runs in the Rocky Reach area, coupled with river regulation where very little water is spilled during the downstream migration, the District and Department recommend the steelhead rearing program be maintained at 195,000 annually until conditions warrant significant reductions.

SIGNED this 25th day of JUNE, 1975.


Washington Department of Game


Washington Department of Game


Public Utility District No. 1 of Chelan Cour